

ADDRESSING ENVIRONMENTAL JUSTICE IN THE  
Environmental Assessment (EA)/ Impact Statement (EIS)

FEDERAL HIGHWAY ADMINISTRATION  
REGION 9

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Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, was signed by President Clinton on February 11, 1994 and published in the February 16, 1994 *Federal Register*, Vol. 59, No. 32. The Executive Order (EO) and accompanying memorandum focuses Federal attention on the environmental and human health condition in minority and low-income communities, enhances the provision of nondiscrimination in Federal programs affecting human health and the environment, and encourages better minority and low-income communities access to public information and an opportunity to participate in matters relating to their environment.

The EO requires each Federal agency to take the appropriate steps to identify and avoid any disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on minority and low-income populations. The Department of Transportation (DOT) and the FHWA have initiated steps to ensure compliance with the EO. The DOT's Final Environmental Justice Strategy was published in the June 29, 1995 *Federal Register*, Vol. 60 No. 125 and the final DOT Order, Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations was published in the April 15, 1997 *Federal Register*, Vol. 62, No. 72 .

This discussion paper is intended as an interim guide for addressing environmental justice during the EA/EIS process until formal agency guidance is issued. The FHWA Technical Advisory 6640.8A (TA) provides guidance for documenting the potential social, economic, and environmental impacts considered in the selection and implementation of Federal-aid highway projects. Title VI of the Civil Rights Act of 1964 requires that no person, because of race, color, religion, national origin, sex, age, or handicap, be excluded from participation in, denied the benefits of, or be subjected to discrimination by any Federal-aid activity. E.O. 12898 is a renewed emphasis on the Title VI law with respect to minority population and adds low income populations as part of environmental justice concerns. This E.O. requires FHWA to identify these populations and address any project effects upon them.

The following supplements the TA for compliance with the principles of environmental justice. This information is needed to demonstrate that the effects on minority and low-income populations are given explicit consideration in EA/ EIS documents and will be found under the social and economic discussion, with references to other subject headings as appropriate:

#### Definitions

- Population: Using field observations and localized census tract information may be all that is necessary. Population means any readily identifiable groups or clusters of minority persons and/or low-income persons who are in the project study area. If the population is dispersed and not an identifiable minority or low-income community, then the study area population may be homogeneous.
- Low-Income: Currently, the DOT definition of low income is a population whose median household income is at or below the Department of Health and Human Services (DHHS) poverty guidelines. In 1997, this is \$15,150 for a family of four. The DHHS updates the State

Median Income Estimates for Use Under the Low Income Home Energy Assistance Program on an annual basis. This allows for adjustments for different geographical regions. For states which do not collect data using DHHS statistics, then a consistent data source (HUD or any other) must be used for every highway project in the state.

#### IDENTIFYING EXISTING POPULATIONS

- 1) In the affected environment discussions, where the existing social, economic, and environmental setting of the study area is described, provide descriptive information on the general population in the project study area. Environmental Justice considerations should include identification of the ethnicity and income level of the overall population. Small minority and low-income communities could exist within a non-minority/non low-income neighborhood. A very small minority or low-income population does not eliminate the possibility of a disproportionate high and adverse effect of a project on these populations. The comparative impact must be addressed.
- 2) Document the agency's commitment to Title VI of the Civil Rights Act, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- 3) When it is documented in the socio-economic section that there are no groups of minority or low income populations in the area that will be affected by the project, the socio-economic section should conclude with the statement that "No minority or low-income populations have been identified that would be adversely effected by the proposed project as specifically required by E.O. 12898 regarding environmental justice."
- 4) When there are groups of minority or low-income populations in the project area, the focus of E.O. 12898 and the principles of environmental justice should be briefly discussed to provide the necessary background information and an understanding of what is required in the consideration of environmental justice. This will also help to establish a basis for the subsequent discussions in the environmental document. The following wording may be used:

"Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, signed by President Clinton on February 11, 1994, directs federal agencies to take the appropriate and necessary steps to identify and address disproportionately high and adverse effects of federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law."

#### IDENTIFY COORDINATION, ACCESS TO INFORMATION & PARTICIPATION

Document in the Comments and Coordination Section, the degree to which the affected groups of minority and/or low-income populations have been involved in the decision making process related to the alternatives selection, impact analysis, and mitigation. Discuss all proactive efforts to ensure meaningful opportunities for public participation including any specific activities to increase outreach for low-income and minority participation during the project development process. Indicate the opinions of the communities related to these decisions and what steps are being taken to resolve any controversy that exists.

#### IDENTIFYING ADVERSE EFFECTS

- 1) EJ considerations will be summarized under the social-economic impact discussion in environmental consequences (impacts) section. References to other topic sections in the EIS can

be provided here, as appropriate. The beneficial and adverse effects on the overall population and on minority and/or low-income populations or communities need to be discussed under the applicable topics which should include: air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; aesthetic values; community cohesion or a community's economic vitality; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, relocation impacts, changes to travel patterns, accessibility, safety issues, indirect impacts, and construction/temporary impacts, should be included and other impacts or project results which could potentially impose a disproportionate and adverse health or environmental impact on a minority and/or low-income population.

- 2) Evaluate the project impacts on the minority and/or low-income populations with respect to impacts on the overall population within the project area.
- 3) Where there are adverse impacts on any population, discuss what measures are being considered for mitigation including avoidance, minimization, and opportunities to enhance communities and neighborhoods. Any project development activity which demonstrates sensitivity to a special population, neighborhood, or community should be highlighted.
- 4) If there are groups of minority or low-income populations that will be impacted by the project, the EIS should demonstrate whether the impacts will not be adverse after consideration of mitigation and project benefits.
- 5) If the impacts are determined to be adverse despite mitigation then the impacts need to be evaluated as to whether or not they will result in disproportionately high and adverse impacts.

There can be one of two conclusions made at this level of analysis: Based on the above discussion, the XYZ alternative(s) will not cause disproportionately high and adverse effects on any minority or low-income populations as discussed in E.O. 12898 regarding environmental justice (end of EJ analysis);

or

The XYZ alternative(s) will result in adverse impacts to minority and low-income populations even after consideration of mitigation and project benefits [must go to the next section].

#### IDENTIFYING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

The determination of whether or not the adverse effect, (concluded from #5 above), is disproportionately high is based on whether or not the adverse impacts from an alternative are predominately borne by a group of minority and/or low-income population. Or, the adverse effect is appreciably more severe or greater in magnitude on minority or low-income population than the adverse effect suffered by the non-minority and/or non-low-income population even after taking into account all offsetting benefits to the affected populations.

A discussion is needed to demonstrate how other mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effects on the low income or minority populations are not practicable. Or, that the cost, social, economic, human health and environmental impacts are more severe and reach extraordinary magnitudes.

Conclusion Statement for disproportionately high and adverse effects:

Based on the above analysis, the XYZ alternative(s) will cause disproportionately high and adverse impacts on minority or low-income populations. All further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect on the low-income and

minority population have been considered and are not practicable or would result in other impacts of extraordinary magnitude. Therefore, there are no feasible and prudent alternatives to avoid the disproportionately high and adverse impacts on the low income or minority populations.

*There is no new right of legal action or redress under this Executive Order 12898*